



Molly Joseph Ward
Secretary of Natural Resources

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

VIRGINIA MARBLE MANUFACTURERS, INC.

EPA ID Nos. VAD058916941 (Main Plant) & VAR000516591 (Plant 2)

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board, and Virginia Marble Manufacturers, Inc., for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Va. Code.
2. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
3. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
4. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
5. "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled, as defined by 40 CFR § 260.10.

6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
7. "Designated Facility" means (1) A hazardous waste treatment, storage, or disposal facility which: (i) has received a permit (or interim status) in accordance with the requirements of 40 CFR Parts 270 and 124; (ii) has received a permit (or interim status) from a State authorized in accordance with 40 CFR Part 271; or (iii) is regulated under 40 CFR § 261.6(c)(2) or 40 CFR § 266, Subpart F; and (iv) that has been designated on the manifest by the generator pursuant to 40 CFR § 262.20.
8. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
9. "Facilities" or "Sites" means the VMM facilities in Kenbridge Virginia, which consist of the Main Plant, located at 1201 Fifth Avenue and Plant 2, located at 101 Brunswick Avenue.
10. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
11. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
12. "LQG" means large quantity generator, a hazardous waste generator that generates 1000 kilograms (2200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(a)-(b) and (g)-(l).
13. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
14. "Order" means this document, also known as a Consent Order.
15. "VMM" means Virginia Marble Manufacturers, Inc., a company authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. VMM is a "person" within the meaning of Va. Code § 10.1-1400.
16. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effective date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.

17. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
18. "SQG" means a small quantity generator, a hazardous waste generator that generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(d)-(f).
19. "Storage" means the holding of solid or hazardous waste for a temporary period, at the end of which the waste is treated, disposed of, or stored elsewhere, as defined by 40 CFR § 260.10 and 9 VAC 20-81-10, as applicable.
20. "Va. Code" means the Code of Virginia (1950), as amended.
21. "VAC" means the Virginia Administrative Code.
22. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. VMM owns and operates the Facilities, both of which are located in Kenbridge, Virginia. VMM generates hazardous waste at the Facilities. The Main Plant is located at 1201 Fifth Avenue and Plant 2 is located at 101 Brunswick Avenue. At both plants, VMM manufactures synthetic marble countertops with integrated sinks, backsplashes, and some custom countertops. Operations at this site are subject to the Virginia Waste Management Act and the Regulations.
2. At the Main Plant, VMM generates solid wastes which are also hazardous wastes. VMM submitted a RCRA Subtitle C Site Identification Form for the Main Plant dated September 1, 1983 that gave notice of regulated activity at the Main Plant as a SQG of hazardous waste. VMM was issued EPA ID No. VAD 058916941 for the Main Plant. VMM's generator status at the Main Plant was changed to LQG by DEQ on December 9, 2013 based on information obtained during an inspection performed on August 1 and September 16, 2013.
3. At Plant 2, VMM generates solid wastes which are also hazardous wastes. VMM submitted a RCRA Subtitle C Site Identification Form for Plant 2 dated August 5, 2008, that gave notice of regulated activity at Plant 2 as a SQG of hazardous waste. VMM was issued EPA ID No. VAR000516591 for Plant 2. VMM's generator status at Plant 2 was changed to LQG by DEQ on December 9, 2013 based on information obtained during an inspection performed on August 1 and September 16, 2013.

4. Hazardous wastes generated at the Main Plant include wastes with the following waste codes: D001, F002, and F003 as described in 40 CFR § 261.21. These hazardous wastes are accumulated in containers at the Main Plant after generation.
5. Hazardous wastes generated at Plant 2 include wastes with the following waste codes: D001 and F003, as described in 40 CFR § 261.21. These hazardous wastes are accumulated in containers at Plant 2 after generation.
6. On August 1 and September 16, 2013, DEQ-BRRO staff inspected the Facilities for compliance with the Virginia Waste Management Act and the Regulations. Based on the inspection and follow-up information, the Department made the following observations:
 - a. VMM did not make a waste determination for two waste streams at the Main Plant and one waste stream at Plant 2.
 - b. VMM did not notify DEQ of a change to large quantity generator status for both the Main Plant and Plant 2.
 - c. Nine open hazardous waste containers were present at the Main Plant and two open hazardous waste containers were present at Plant 2.
 - d. Ten hazardous waste containers were not marked with accumulation start dates at the Main Plant one hazardous waste container was not marked with an accumulation start date at Plant 2.
 - e. Twelve hazardous waste containers were not marked with the words "Hazardous Waste" at the Main Plant and two hazardous waste containers were not marked with the words "Hazardous Waste" at Plant 2.
 - f. Weekly inspections in <90 day accumulation areas were not conducted from December 15, 2009 through February 6, 2011 and from December 18, 2012 through August 1, 2013 at the Main Plant and not at all at Plant 2.
 - g. At both the Main Plant and Plant 2, the Hazardous Waste Training Policy and the Contingency Plan do not meet LQG requirements.
 - h. At the Main Plant, VMM treats waste acetone, a hazardous waste, by evaporation, which is an unapproved treatment method.
 - i. At both the Main Plant and Plant 2, VMM did not have a written waste analysis plan for treatment of waste granite resin, a hazardous waste.
 - j. VMM transported waste acetone, a hazardous waste, from Plant 2 to the Main Plant without a transporter permit, without notifying EPA, and without a hazardous waste manifest.

7. 40 CFR § 262.11 requires that a person who generates a solid waste, as defined in 40 CFR § 261.2, determine if that waste is a hazardous waste.
8. 40 CFR §262.20(a)(1) requires the use of a manifest during transportation of hazardous waste.
9. 40 CFR §262.34(a)(2) requires that generators of hazardous waste mark hazardous waste containers kept a <90 day accumulation area with an accumulation start date.
10. 40 CFR § 262.34(a)(4) requires that large quantity generators of hazardous waste comply with certain requirements specified for owners and operators, which include maintaining a Waste Training Policy and a Contingency Plan.
11. 40 CFR § 262.34(c)(1)(ii) requires that generators of hazardous waste mark hazardous waste containers with the words "Hazardous Waste".
12. 40 CFR § 265.16(a) requires that facility personnel complete training in hazardous waste management.
13. 40 CFR § 265.51 requires that the owner or operator must have a contingency plan for the facility.
14. 40 CFR §265.173(a) requires that generators of hazardous waste keep hazardous waste containers closed.
15. 40 CFR § 265.174 requires that generators of hazardous waste perform weekly inspections of <90 day accumulation areas.
16. 40 CFR § 268.7(a)(5) requires a written waste analysis plan for treatment of hazardous wastes offered for land disposal.
17. 40 CFR § 268.40(a)(3) requires that hazardous wastes offered for land disposal meet approved treatment methods.
18. 9 VAC 20-60-315(D) requires anyone who becomes a large quantity generator to notify the Department in writing immediately of this change in status and document the change in the operating record.
19. 9 VAC 20-60-420(E) requires all transporters of hazardous waste shipments originating or terminating or both in the Commonwealth to obtain a hazardous waste transporter permit in accordance with 9 VAC 20-60-450.
20. On October 2, 2013, based on the inspection and follow-up information, the Department issued NOV No. NOV-13-10-BRRO-001 to VMM for the violations described in Paragraph C(6) above.

21. In meetings on January 28, 2014, March 31, 2014, October 8, 2014, and January 22, 2015, Department staff discussed the violations with representatives of VMM.
22. On August 7, 2014, VMM submitted a written response to the NOV. The written response documented correction of most of the violations listed in the NOV except those related to documentation of employee training and documentation of a written waste analysis plan for the treatment of waste granite resin.
23. Based on the results of the August 1 and September 16, 2013 inspection, the January 28, 2014 through January 22, 2015 meetings, and the documentation submitted by VMM, the Board concludes that VMM has violated 40 CFR § 262.11, 40 CFR §262.20(a)(1), 40 CFR §262.34(a)(2), 40 CFR § 262.34(a)(4), 40 CFR § 262.34(c)(1)(ii), 40 CFR § 265.16(a), 40 CFR § 265.51, 40 CFR §265.173(a), , 40 CFR § 268.7(a)(5), 40 CFR § 268.40(a)(3), 9 VAC 20-60-315(D), 9 VAC 20-60-420(E), as described in paragraph C(6), above.
24. VMM has submitted documentation that verifies that the violations described in paragraph C(6), above, have been corrected.
25. In order for VMM to complete its return to compliance, DEQ staff and representatives of VMM have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it pursuant to Va. Code § 10.1-1455 and upon consideration of Va. Code § 10.1-1186.2, the Board orders Virginia Marble Manufacturers, Inc., and Virginia Marble Manufacturers, Inc. agrees:

1. To perform the actions described in Appendices A and B of this Order; and
2. To a civil charge of \$50,000.00 in settlement of the violations cited in this Order, to be paid as follows:
 - a. Virginia Marble Manufacturers, Inc. shall pay \$12,500.00 of the civil charge within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Virginia Marble Manufacturers, Inc. shall include its Federal Employer Identification Number (FEIN) (54-0848845) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

- b. Virginia Marble Manufacturers, Inc. shall satisfy \$37,410.00 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix B of this Order.
- c. The net project costs of the SEP to Virginia Marble Manufacturers, Inc. shall not be less than the amount set forth in Paragraph D.2.b. If it is, Virginia Marble Manufacturers, Inc. shall pay the remaining amount in accordance with Paragraph D.2.a of this Order, unless otherwise agreed to by the Department. "Net project cost" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.
- d. By signing this Order Virginia Marble Manufacturers, Inc. certifies that it has not commenced performance of the SEP.
- e. Virginia Marble Manufacturers, Inc. acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by Virginia Marble Manufacturers, Inc. to a third party, shall not relieve Virginia Marble Manufacturers, Inc. of its responsibility to complete the SEP as described in this Order.
- f. In the event it publicizes the SEP or the SEP results, Virginia Marble Manufacturers, Inc. shall state in a prominent manner that the project is part of a settlement of an enforcement action.
- g. The Department has the sole discretion to:
 - i. Authorize any alternate, equivalent SEP proposed by the Facility; and
 - ii. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
- h. Should the Department determine that Virginia Marble Manufacturers, Inc. has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify Virginia Marble Manufacturers, Inc. in writing. Within 30 days of being

notified, Virginia Marble Manufacturers, Inc. shall pay the amount specified in Paragraph D.2.b, above, as provided in Paragraph D.2.a, above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of VMM for good cause shown by VMM, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, VMM admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. VMM consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. VMM declares that it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by VMM to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. VMM shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. VMM shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. VMM shall notify the DEQ Regional Director verbally within 24 hours and in writing within three

business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which VMM intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

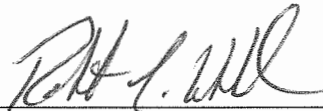
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and VMM.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after VMM has completed all of the requirements of the Order;
 - b. VMM petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to VMM.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve VMM from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by VMM and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of VMM certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind VMM to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of VMM.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, VMM voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 26th day of January, 2016.



Robert J. Weld, Regional Director
Department of Environmental Quality

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Virginia Marble Manufacturers, Inc. voluntarily agrees to the issuance of this Order.

Date: 12-2-2015 By: Andrew Scott Chubb

Commonwealth of Virginia

City/County of Henricburg

The foregoing document was signed and acknowledged before me this 2nd day of

Dec. 2015, by Andrew Scott Chubb.

Elizabeth W. Marker
Notary Public

7031486
Registration No.

My commission expires: 4-30-18

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. Not later than 30 days after the effective date of this Order, VMM shall submit the results of an analysis for methyl ethyl ketone content in waste granite resin as specified in the Waste Analysis Plan dated November 2014 that was submitted to DEQ by VMM as Attachment 5 to a letter dated November 12, 2014.
2. Unless otherwise specified in this Order, VMM shall submit all requirements of Appendix A of this Order to:

Robert Steele
VA DEQ –Blue Ridge Regional Office
3019 Peters Creek Road
Roanoke, VA 24019

Phone: (540) 562-6777
Fax: (540) 562-6725
Email: Robert.Steele@deq.virginia.gov

APPENDIX B
VIRGINIA MARBLE MANUFACTURERS, INC.
SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

In accordance with Va. Code § 10.1-1186.2, Virginia Marble Manufacturers, Inc. shall perform the Supplemental Environmental Project (SEP) identified below in the manner specified in this Appendix. As used in this Order and Appendix, SEP means an environmentally beneficial project undertaken as partial settlement of a civil enforcement action and not otherwise required by law.

1. The SEP to be performed by Virginia Marble Manufacturers, Inc. is construction of enhancements to an acetone storage building adjacent to the main building at Plant 2. This building will be constructed of fully grouted 8" concrete masonry unit with rebar and 16" walls with a concrete ceiling. It will include the following features not included in the previous acetone storage area:
 - a. A dry chemical fire suppression system designed by a qualified professional services firm to be compliant with the International Fire Code, Section 904.6 that will provide coverage in the acetone room to reduce the risk of releases of acetone to the environment and otherwise ensure that any fires that occur are quickly extinguished prior to a release of acetone.
 - b. A 1,400 CFM explosion-proof ventilation system designed by a qualified professional services firm to maintain acetone vapor concentrations well below explosive limits.
 - c. Explosion-proof lighting.
 - d. Enhanced secondary containment that will provide secondary containment volume of 600 gallons, which will be greater than the maximum volume of acetone in storage at any point in time. Virginia Marble will develop a procedure that limits the storage of acetone to 500 gallons and shall include written documentation of adoption of this procedure in the final written report referenced in Paragraph 4 below.
 - e. A fire resistant stainless steel acetone rinse tank with heavy duty formed painted steel legs and a gas shock lid assist fire cover.
2. The SEP shall be completed by March 1, 2016.
3. Virginia Marble Manufacturers, Inc. shall submit progress reports on the SEP on a monthly basis, due the 31th day of each month, with the first report due December 31, 2015.

4. Virginia Marble Manufacturers, Inc. shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Order, and certified either by a Certified Public Accountant or by a responsible corporate officer or owner. Virginia Marble Manufacturers, Inc. shall submit the final report and certification to the Department within 30 days from the effective date of the Order.
5. If the SEP has not or cannot be completed as described in the Order, Virginia Marble Manufacturers, Inc. shall notify DEQ in writing no later than February 15, 2016. Such notification shall include:
 - a. an alternate SEP proposal, or
 - b. payment of the amount specified in Paragraph D.2.b as described in Paragraph D.2.a.
6. Virginia Marble Manufacturers, Inc. hereby consents to reasonable access by DEQ or its staff to property or documents under the party's control, for verifying progress or completion of the SEP.
7. Virginia Marble Manufacturers, Inc. shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment, or similar documentation within 30 days of the project completion date. For the purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from Virginia Marble Manufacturers, Inc. Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.
8. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

Robert Steele
VA DEQ –Blue Ridge Regional Office
3019 Peters Creek Road
Roanoke, VA 24019

Phone: (540) 562-6777

Fax: (540) 562-6725

Email: Robert.Steele@deq.virginia.gov